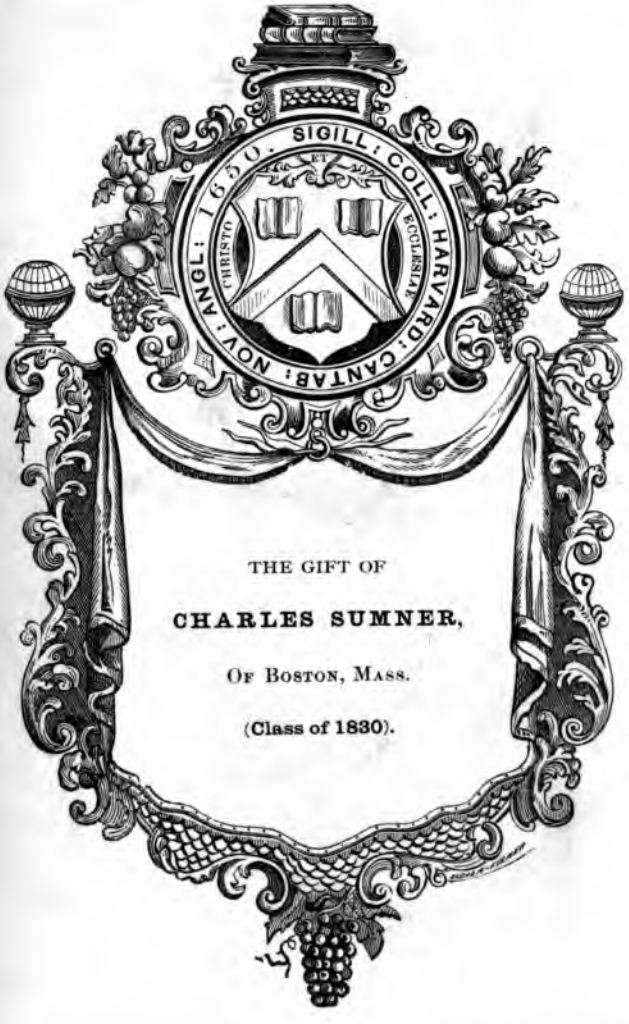

SPEECH

OF

HON. WILLIAM A. GRAHAM,

OF ORANGE,

In the Convention of North-Carolina, Dec. 7th, 1861, *on the Ordinance concerning Test Oaths and Sedition.*

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SPEECH.

MR. PRESIDENT:—When the original ordinance pertaining to this subject came up for consideration several days since, I took occasion to express my decided aversion to test oaths, as antiquated instruments of oppression and despotism, unsuited to an enlightened age, and wholly at war with all our ideas of free republican government. I was then of opinion that an indefinite postponement was the proper disposition to make of the entire topic. At the suggestion of others, it was referred to a committee, of which, under your appointment, I had the honor to be a member. When that committee assembled, and the honorable Chairman, Mr. Biggs, produced and read from an old act of 1777, as contained in Iredell's Revisal, the two first sections of the ordinance reported by him, without much reflection I gave that part of the ordinance my concurrence, and consented that it might be reported to the Convention. But, in committee, as in this House, everywhere and under all circumstances, I have been unalterably opposed to a test oath, and especially to that most objectionable form of such an oath contained in the report of the committee, and proposed to be enacted into a law of the State. And upon a little more consideration, I am satisfied that no enactment by this Convention is required in regard to sedition; I therefore, now submit the motion, that in the outset I deemed appropriate, that the further consideration of the subject be indefinitely postponed. I esteem it proper in this connection further to state, that the eloquent, argumentative report of the Chairman of the committee, so full of fiery zeal and patriotism, was never heard of by me, until it was read by the Chairman at your desk. If it was ever read to the committee, it was on some occasion other than the two meetings I was summoned to attend, and I received no intimation that such a paper might be expected. This I mention, not in the way of complaint, but to acquit myself of any neglect of duty in failing to present a counter-report against a document, which, with all respect I must say, inculcates doctrines most intolerant and tyrannical.

Mr. President, the original proposition was liable to objections enough. I endeavored to point out these in the former discussion. It allowed a single magistrate upon complaint

made, to bring before himself any citizen accused of disloyalty, and then to determine, in the first place, what constituted disloyalty—second, whether the person charged was guilty—and thirdly, to impose on him a sentence to take an oath of allegiance to the State, or be expelled from the country. Revolting to our conceptions of justice and freedom as was this concentration of power in the hands of a magistrate, it yet retained something of the manly spirit of the common law, and of the elementary principles of liberty embodied in our bill of rights. There was to be a responsible prosecutor—persons arraigned and accused were to be allowed the customary privilege of defence, with the right of course, to confront the accusers and witnesses, and, above all, to be protected against being compelled to give evidence against themselves. But the substitute of the committee proposes what? Why, to institute a proceeding in the nature of a criminal prosecution against every free citizen; yea, sir, against every male inhabitant of the State, from the beardless youth of sixteen years, five years in advance of his admission to the rights of a citizen, to the aged patriarch of one hundred and sixteen, tottering on his staff, with one foot in the grave, by which they are each and all to be attainted of treason, and banished from their homes and country; or, if graciously permitted to remain, to be deprived of their rights as freemen, and reduced to a degraded caste—unless and until they shall purge themselves of this foul crime, by taking the oath of allegiance, military fealty, and abjuration, compounded and prescribed in the ordinance before us. This is the obvious effect of the provisions relating to a test oath, when analyzed and brought to a plain interpretation. Your magistrates are to be sent out into all the land, from the shores of the ocean to the summits of the Smoky Mountains, and they are to beset every man and boy above the prescribed age, with a test oath in the left hand, and a sentence of banishment or degradation in the right. In this dilemma, there is to be no means of escape, nor any more freedom of action than when the highwayman with his pistol at your breast, offers the alternatives, "your money or your life." Observe, sir, there is to be no inquiry as to guilt, as upon accusation and arraignment, but the party is to be placed by law in a state of condemnation—his guilt is to be assumed, until he shall exonerate himself by taking the oath; and upon his refusal so to do, his guilt being put beyond question, the penalty annexed is—what? Not a disqualification for holding office—not a forfeiture of a part or the whole of his goods and lands, but a forfeiture of his birthright as a citizen of North-Carolina.

Mr. President, if this Convention, like a French national Assembly, were to declare itself in permanent session, and arrogate all the powers of government, it would give no greater shock to public sentiment, and make no more dangerous stride towards despotism, than would be effected by the passage of this ordinance. It is true, there have been confided to us extensive powers, but they are delegated powers, and must be exercised not whimsically or tyrannically, but in conformity with those elementary principles of freedom and justice, on which are founded our American system of Constitutional government. If these are violated, it is usurpation on our part, an abuse of power equal to usurpation, and for want of other remedy, it may expect to provoke that old and primary one of resistance on the part of the people. When elected to these seats in the month of May last, we were not understood to be placed above, or out of the reach of the well known responsibilities of the representative to the constituent body. Our countrymen supposed that they retained the right to judge of and canvass our whole proceedings as freely as they were accustomed to do as to those of other representatives; and that if dissatisfied with what we had done, a sufficient majority, by some process or other, might set it aside, and afford redress. They further supposed, that, although we had power to disfranchise men, and change the qualifications for the right of suffrage, yet that no new test of citizenship would be applied to those born upon the soil, of parents who had achieved the independence of the country, and established the free institutions, whose essential features no one desires to change. What, then, will be their surprise, not to say indignation, if this ordinance shall pass, and they are told that no man can ever vote again—nay, that no man will be allowed to remain in the State, but every one will be exiled who does not take an oath that the Convention has ordained? Sir, every North Carolinian rejoices in the idea, that, like St. Paul, he was free-born. And, although this freedom was purchased at a great price, no less than the blood of his fathers shed in every battle-field of American independence, from the shores of the Hudson to the everglades of Florida, it came to him as an inheritance, the more valued, because of its association with his ancestral pride and glory. His right to dwell in and breathe the pure air of the land of his birth; his right to participate in the election of rulers, and, if it suit his inclination and the will of a majority, to be himself invested with a portion of the powers of the republic, he will suffer neither to be taken away nor trifled with. He did not acquire them by an oath, and he will spurn any oath offered to him as a condition of

their continued enjoyment. It is one of those blunders characterized by Talleyrand as worse than a crime, for statesmen by their measures to encroach upon and offend so sacred a feeling as the pride of nativity—the self-respect and manhood of a high-spirited, free-born American. Sir, the people when presented with this oath, will turn upon this Convention, and inquire "upon what food have these our Cæsars," at Raleigh, "fed, that they have grown so great?" We thought they were our servants; how have they become our masters? We had a free election according to the usages and Constitution of our fathers when we chose them as our representatives; by what legerdemain, by what audacity, do they declare that we shall never vote again, no nor inhabit our present homes, but shall be driven out as fugitives and vagabonds, unless we take an oath that they have dictated? It will be no answer to tell them, as they are told in substance in the report of the committee, and the speech of the Chairman, Mr. Biggs, in support of the ordinance, that the oath is but an evidence of patriotism, and no one but a traitor need have any hesitation in taking it. The prompt response would be, We care but little for the thing proposed to be sworn to; the objection is to being compelled to swear at all, as a condition to the enjoyment of our inborn rights of property and citizenship. We render to the government our loyalty and duty, as we cherish and support our wives and children, and perform other obligations as members of society; but we will take no oaths upon compulsion, to bind us to those duties, and least of all, an oath that is accompanied with the polite alternatives of exile or degradation. Nor will they be any better satisfied with that other idea contained in the report, and which seems to be the favorite explanation of the ordinance, that it is a mere measure of detective police, not intended to do any harm to patriotic men, but to discover and expel disloyal ones. This assumes that it is legitimate and proper to hunt through the consciences of all good men by an oath of discovery, in order to ferret out the bad. By parity of reasoning, if a treasonable correspondence were suspected in any county or neighborhood, every man should be required to open his desk, and submit his private correspondence and papers to the inspection of a magistrate. This certainly would be no more harsh than to ask a discovery of his conscience. Or to illustrate it more strikingly, it is in principle, the same as in case a theft had been committed, in order to be sure of visiting punishment on the real offender, you should require every inhabitant of the vicinage to receive forty stripes save one. Your people will say to you, point out the guilty or suspected persons, take

the warrant of the law in your hands, summon us of the *posse comitatus* if necessary, and we are ready to render our duty anywhere; but our homes and consciences are not to be made hunting grounds for traitors and felons, and if we could submit to make them such, we should not feel ourselves much elevated above either.

But, Sir, the jealous and sagacious spirit of liberty which pervades our people, will discover in this process of a test oath something more than an usurpation or abuse of power on our part, and an instrument of tyranny, oppression and degradation upon the citizen. They will perceive at a glance, that no more effectual contrivance could be devised to enable a faction in the possession of temporary power, to convert the government into an oligarchy, expel their opponents from the State, and riot upon the substance they had left. Such a faction need only to enact a test oath, for patriotic objects of course, but to take care to infuse into it such ingredients as they knew would be offensive and inadmissable by its opponents, and declare that every man who refused it, should be banished from the State, or lose his rights as a citizen with forfeiture of all his possessions. Carry it out with the high hand of force, and it makes no difference whether a majority or minority, whether one in fifty will take the oath; the few who do will have the whole government in their hands, and the spoils of the exiles besides. Our theory has been, that a majority within the limitations of our written Constitutions, can mould the government at will—can make revolutions and unmake them; but this is an invention by which that theory is subverted, and those who have power may keep it till the end of time. Whenever they are about to lose favor with the constituent body, they have but to prescribe a new oath, and that no man shall vote who refuses it, and they will never fail in an election. Since the commencement of the present revolution and the adoption of the new Constitution of the Confederate States, there has been much speculation as to the facility with which it may be abrogated by any State, who may become dissatisfied with its operation or administration. If there be that virtue in test oaths which this ordinance supposes, it may be perpetuated indefinitely. If there be a majority favorable to it in the Legislature, as there will be of course in the outset, whenever they suspect opposition or lukewarmness, they may enact an oath to suit the case, and banish those who refuse it before the next election. I speak as if there were no constitutional impediments to such a course, as this ordinance considers that there are none, or proposes to override them, if they exist.

Mr. President, the very mention of a test oath carries us back to the "bigot monarchs and the butcher priests" of the days of the Tudors and Stuarts, and beyond these, to the Inquisition itself. It is a device of power in Church and in State, to perpetuate itself by force, against free discussion and inquiry, and in defiance of what in more liberal times we call public sentiment. In direct contravention of that most essential principle of criminal justice, that no man shall be compelled to give evidence against himself, it requires of its victim the confession of a creed, and his failure or refusal it takes as conclusive evidence of his guilt, and inflicts upon him torturous penalties or forfeitures, such as, if they will not cure him of his heresy, may deter others in like cases offending. Whether the creed be religious or political, or the remedy be the thumbscrew, the iron boot, the break-wheel or the rack, or whether it be banishment, deprivation of privilege, degradation, or forfeiture of estate, there is no difference in the odiousness of the principle. Forsaking every vestige of Christian charity and toleration, it assumes to control by force that conscience, which the God who gave it designed to be free, and avows its purpose to drive men to perjury or self-accusation. I have somewhere seen or read of a picture of a trembling prisoner of the Inquisition, who when called to take the religious test of that inexorable tribunal, replies: "I cannot; I'll be damned, if I do." To which the stern Inquisitor replies: "You'll be damned, if you don't." It will require no stretch of imagination to picture your justice, under this ordinance, with his prisoner before him, refusing the oath, with "I'll be perjured, forsworn, if I take it;" and the equally stern reply, "You'll be banished, if you don't take it."

The history of our mother country affords us some instruction on the subject of tests, and the persecutions that attended them, religious and political. In the Catholic ascendency, Protestants were the victims; in the Protestant reigns, Catholics suffered in turn; and it is a reproach to that enlightened and Christian nation, even that down within our own memories, no man could hold even a military office until he took a test oath against Catholicism, and received the sacraments according to the rites of the Church of England. This last vestige of intolerance and bigotry in that country was swept away under the enlightened counsels of Earl Gray, the Duke of Wellington and Sir Robert Peel, not more than thirty years ago.

But in the worst and most intolerant times, neither in England nor in any civilized nation of which I have recollection, was there ever such an experiment made as is proposed to be made here, of prescribing a test, religious or political, and

running a muck with it against the whole people, to see if perchance, some victim may not be found for banishment or degradation.

In this country we have known but little of test oaths, except as we have read of them under more arbitrary governments. The Legislature of Virginia, more than fifty years ago, in a laudable desire to suppress the practice of duelling, directed an oath to be taken by certain public functionaries, and among others the advocates in her courts of justice, that they would not engage in any duel. Mr. Benjamin Watkins Leigh, since known to the country as one of her most distinguished lawyers and statesmen, was then at the bar, and the court of appeals having decided that the oath must be taken, Mr. Leigh requested time to consider the question of the power of the Legislature to impose such an oath. And at a subsequent day he submitted an argument which satisfied the court that the power did not exist, and they unhesitatingly reversed the former decision, which Chief Justice Roane pronounced to be an "off hand and erroneous" one; an example of candor and fairness of mind which I beg to commend to all who may have inclined in favor of this ordinance. In his argument, Mr. Leigh so vividly depicts the mischievous nature of test oaths as the "barbed and poisoned weapons" of despotic power, that I will detain the Convention by reading a few sentences from it:

"If the *words* of the Constitntion," said he, "were doubtful, its spirit could not be mistaken. If the Legislature might add one new disqualification, they might add many; multiply disabilities without end; disqualify whole districts or classes of men by personal or local description; make an academical degree, or even a previous service in one of its own bodies, a necessary qualification; and thus convert the government into an oligarchy. If this tremendous power existed at all, it was boundless and uncontrollable as the winds; and dissipated at once all our fond notions of a written constitution, late the glory of American politics. These test laws, particularly, were the first weapons young oppression would learn to handle; weapons the more odious, since, though barbed and poisoned, neither strength nor courage was requisite to wield them. Should we rely on public virtue to keep us from the use and extension of this system of tests? In no age, nor clime, nor nation, had ever virtue wholly swayed human bosoms and actions; man was universally liable to be transported with passion, blinded with folly, corrupted with vice; and yet more with power, maddened with faction, and fired with the lust of domination; let us not flatter ourselves that we

were exempt from the common lot; and although the wise exposition of the bill of rights, by the act to establish religious freedom, might for a time secure us from a *religious* test, a *political* one was certainly a possible, perhaps a probable, and not very remote event. Sir, I am possessed with a strange delusion if *the very law in question* does not appoint a political test. I fear other instances might be recounted. Such are the BEGINNINGS. The END of all these things is death."

Sir, this ordinance goes beyond the apprehensions of Mr. Leigh, and does apply a religious test to a considerable portion of our population, as a condition of their being allowed to remain citizens. It would be a very great mistake to suppose, that the oath which it prescribes, was an oath "to support the Constitution of the Confederate States," the only oath to that government required by its Constitution; or that it was the common oath of allegiance to the State of North-Carolina, or both of these together. Let us read it:

"I, A. B., do solemnly swear, (or affirm, as the case may be,) that I will bear faithful and true allegiance to the State of North Carolina, and will to the utmost of my power, support, maintain and defend the independent government of the Confederate States of America, against the government of the United States, or of any other power, that by open force or otherwise, shall attempt to subvert the same. I do hereby renounce my allegiance to the government of the United States, and will support and defend the Constitution of the Confederate States of America, and the Constitution of this State, not inconsistent with the Constitution of the Confederate States—so help me God."

Now, Sir, the requirement of this affirmation to be taken by the denomination called Quakers, is as effectual an act of banishment of that sect, as if it had been plainly denounced in the ordinance. And the same may be said, I presume, in relation to Menonists and Dunkers, though I have less knowledge of them. There were some of the last named class in the county of Lincoln during my boyhood; whether they remain, and keep up their peculiar tenets, I am not informed. But the Quakers are a well known sect, numbering not less than ten thousand persons in the State—and it is equally well known that they will not engage in war, and are conscientiously scrupulous against bearing arms. Our laws, from the Revolution downward to this day, have respected their scruples, and extended to them the charity and toleration due to the sincerity and humility of their profession. This ordinance wholly disregards their peculiar belief, and converts every man of them into a warrior or an exile. True, they are

allowed to affirm, but the affirmation is equivalent to the oath of the feudal vassal to his lord, to "defend him with life and limb and terrene honor." It is, that they "will to the *utmost of their power*, support, maintain and *defend* the independent government of the Confederate States of America, against the United States, or any other power, that by *open force or otherwise* may attempt to subvert the same," &c. If this does not include military defence, it is difficult to find language that would. It is so well known that the ordinary oath to the State implies defence with arms, that the Quakers have ever refused to affirm in its terms, but have had a special affirmation provided for them, as may be seen in the present Revised Code, and in all former editions of our laws. This ordinance, therefore, is nothing less than a decree of banishment to them. Sir, this humble denomination, who in the meekness and charity which so distinguished their Divine Master, yield precedence to none, were the first white men who made permanent settlements within our borders. Scourged and buffeted by Puritanism in New England, and Prelacy in Virginia, they found no rest or religious freedom, until they had put the great Dismal Swamp between themselves and the nearest of their persecutors. In the dark forests of its Southern border, they obtained a toleration from the savage red man which had been denied them by their Anglo-American brethren. There they opened the wilderness, reared their modest dwellings, and filled the land with the monuments of civilization. There, and upon the upper waters of the Cape Fear, which they subsequently colonized, their posterity has remained to this day—a quiet, moral, industrious, thrifty people, differing from us in opinion on the subject of slavery, but attempting no subversion of the institution—producing abundantly by their labor, paying punctually and certainly their dues to the government, and supporting their own poor. Sir, upon the expulsion from among us of such a people, the civilized world would cry, shame!

But, it may be said that this was not intended. If so, it but demonstrates that it is dangerous for freemen to take hold of the weapons of despotism and brandish them about, lest they do mischief more than was designed. But there is certainly no exception of Quakers in the ordinance, though they are excepted and specially provided for in the act of Assembly, 1777, from which its main features are copied,—none in those amendments which the Chairman signified his intention to move; and the report of the committee declares "there can be no neutrals in the struggle" in which we are engaged.

It may not be a religious test to others, but, Sir, it is a dis-

turbance of, and interference with the religious sentiment and domestic repose of the country, not to be justified, unless called for by some most urgent necessity. The veteran of the Court-house, who sees every breach of the peace and misdemeanor, and calculates on proving his attendance as a part of his income, may regard oaths as unmeaning ceremonies; but your quiet and retired citizen, who, except when called to the public duty of a juror, or to prove his neighbor's will, has seldom been sworn at all, looks upon them in the language of your public statute, as "being most solemn appeals to Almighty God, as the omniscient witness of truth and the just and omnipotent avenger of falsehood," and takes them not without a feeling of awe. Beyond his daily prayer—

> "That He who stills the raven's clamorous nest,
> And decks the lilly fair, in flowery pride,
> Would in the way His wisdom sees the best,
> For him, and for his little ones provide;"

Beyond this, his morning and evening imploration, repeated perhaps with unwonted fervor and emphasis, in these times of difficulty and scarcity, he takes not his Maker's name. He is accustomed to vex His ear with no blasphemous, unnecessary, unhallowed appeals. When you invade the retirement of such a man by domiciliary visitation, and demand from him his oath, with a threat of banishment branished over his head, he will feel as would the pagan whose household Gods had been rudely jostled from their seats. He, as well as you, Mr. President, has read those thrilling words in which Chatham has engraven on our memories the domestic rights of our fathers beyond the seas, that "every Englishman's house is his castle, though so rude and humble that the rains and the winds of heaven may beat upon, and may enter it, yet the king cannot enter it." He will reflect that until now his house has been equally sacred from the intrusion of government, and his conscience unruffled by impertinent interrogation; and he will instinctively inquire, if these are the first fruits of the new order of things, what may not be expected in the sequel? And in spite of all the apologies and disclaimers that your magistrates may be instructed to make, he can sensibly arrive at no other conclusion, than that he was suspected of disloyalty, and that the visit was designed to drive him to perjury, or exile; or else that it was a senseless proceeding, which ought to bring the government that made it into contempt.

But, Mr. President, the enormity of the proposition remains yet to be told. It violates every safeguard of personal freedom embodied in our bill of rights, most of which have been

consecrated in the history of English liberty from the time of Magna Charta itself. The Northern government became a despotism by usurpation. Pass this ordinance upon the old plea of tyrants, the necessity of the times, and the Southern one, within the borders of North-Carolina, will have become a despotism by legislation. Whereas, our people are resolved to be independent and free, not only in the END but in the MEANS. They are resolved, not only to be freemen at the termination of the contest, but will not surrender their liberties during its progress. Nor will they be satisfied with the flimsy pretexts and excuses for the sacrifice of a sacred principle, that it can do no harm except to traitors. They intend that even traitors shall not be condemned except in accordance with those great principles of right and justice, which are of universal application. For they know full well that it is upon the persons of friendless or odious men that despotism, whether of a single tyrant or of a mob, first lays its hands; and that vigilance is more necessary to the preservation of liberty in times of public peril and revolution, than in peace. Now, Sir, you can hardly mention a guarantee of individual right contained in that immortal declaration prefixed to the constitution, which is not outraged by the proposed proceeding in relation to a test oath. Let me particularize a few of the more prominent among them:

1. Contrary to the very words of that declaration, it "disseizes every freeman" and every boy too above the age of sixteen, of his privileges as a citizen, and converts him into an alien, and exiles him until he shall re-establish his right to citizenship by taking the oath of allegiance, defense, and of abjuration of the government of the United States, already recited; a high-handed outrage in subversion of "the law of the land," the only process by which so dreadful a sentence could be inflicted—and it is well known that "by law of the land" here, is meant a regular trial before Judge and jury, according to the course and usage of the common law.

2. It convicts a freeman of a crime, the high crime of disloyalty to the government, by an act of attainder passed by this Convention, and subjects him to the punishment of being banished, unless he shall acquit himself by an oath—the declaration guaranteeing that no such conviction shall be had "but by the unanimous verdict of a jury of good and lawful men in open court, as heretofore used."

3. Without any evidence of an offense having been committed, and without any offense being described in a warrant and supported by evidence, it considers a free citizen as condemned, and exiles him from his sacred home, unless he will

disclose the secrets of his heart, and they are found to be patriotic, by a Justice of the Peace.

4. In a highly criminal proceeding, it compels a man to give evidence against himself. This hideous feature is a little disguised, but it is unquestionably there. If he will swear the oath he goes free, but if he will not, his refusal is plenary evidence of his guilt, and he suffers the dread penalty. This refusal he is forced to give if his conscience will not allow him to take the oath. Wherein does this differ from that old device of bigotry and cruelty of putting him on the wheel and cracking his bones until he shall declare that he is not guilty of heresy or treason? In nothing that I can perceive, except that in the one case he suffers in the flesh, and in the other it is expulsion from wife and children, and friends, and country.

Mr. President, when my friend, Charles S. Morehead, of Kentucky, as noble and gallant a gentleman as any that I have ever known, was seized on his native soil and hurried off to a prison in a far distant State, upon an alleged order from the Secretary of State at Washington, I thought, not that "ten thousand swords would have leaped from their scabbards," but that the Mississippi valley would have risen as one man, and cried "to the rescue." American constitutional freedom had been struck down in the person of one of the noblest of her sons; and I supposed that without regard to past differences of opinion as to whether the Union should be maintained, all men would have been satisfied by that act of tyranny, that the free Constitution of our fathers was extinct; that arbitrary power reigned in its stead; and that safety was only to be found in the overthrow of that power. But that proceeding, violent and revolting as it was, may be favorably distinguished from this. Morehead was not required to give evidence against himself. The government which arrested him, professed to have had sufficient proof of his guilt, and did not call upon him under penalty of exile, forfeiture or torture, to furnish any evidence either positive or negative to effect the case. Sir, I think it now appears that the oath in question requires some emendation. The citizen ought to be excused from swearing to support the Constitution of North Carolina, as heretofore existing, since the whole proceeding violates so many of its fundamental principles, as in fact, to abrogate it. He might with more propriety be called on to take an oath of abjuration, declaring that he had no faith in the bill of rights, as a means of securing freedom, and renouncing his adherence to it, at least, in all cases where disloyalty was imputed. That would be far more appropriate

than that other oath of abjuration, "renouncing 'hereby' all allegiance to the United States;" implying in the clearest manner that until the oath is taken, allegiance is still due to the United States—a folly that will excite a laugh wherever it is not taken as an insult. The citizen will say, I protest that I thought all this was settled in May last, by the Convention. I have not considered myself as owing any allegiance to the United States, since that time, and I have none that I can "hereby" renounce. With nearly as much reason might he be required to renounce all allegiance to Victoria Regina, successor of the Georges second and third, of whom our fathers were born subjects, and to abjure the heresy of transubstantiation, the invocation of saints, and Popery in general, as the Englishmen who took office were required to do prior to Catholic emancipation. And the power being established, as it is assumed by this ordinance, it would be the easiest thing in the world to superadd a mild adjuration, to abide by the creed as established by the Convention, Synod, Conference or Association, as one or another denomination might happen to predominate with the ruling powers.

And here let me correct a very important error of fact which appears in the committee's report. It is there stated that our volunteers who have entered the military service have taken an oath, and it is argued, that therefore all other citizens should enter into the like solemn obligation. The conclusion would not follow, if the oath were the same. Soldiers received into the service and pay of the State or nation, like public servants in civil office, have always been required to take an oath of allegiance, but citizens in general never were. In fact, however, no volunteer has taken the absurd oath here proposed to be thrust upon the citizen. They have not been required to abjure allegiance "to the government of the United States." They are bound to take an oath of allegiance to the State. And under an act of Assembly in May last, the Governor prescribed an oath, by which they undertook "to obey his orders, and the orders of the officers set over them." But by ordinance of this Convention they were relieved from an oath of this nature, which no man could be expected to keep without some infringement, and which had been disused in the army of the United States, prior to the Mexican war, and since; and they were simply made liable to the penalties of the articles of war, for disobedience of orders, from the time of signing the agreement of enlistment. No volunteer of North-Carolina, therefore, can be lawfully required to take any oath, but the oath of allegiance to the State, anterior to his being mustered into the service of the Confederate States.

That, let us remember, is a government with Legislative Executive, and Judicial functionaries, in full operation, and can prescribe and administer such oaths, as to it may seem meet, to soldiers; and if it wishes to try so hazardous an experiment, to citizens also. Our interference, then, to bind the consciences of our citizens to that government, after having granted it power of life and death over their conduct is quite a work of supererogation, if not of servility. In its Constitution, Art. 6, sec. 4, it has plainly enumerated the persons in the State and Confederacy, whom it requires to take the oath to support it. If it desires to enlarge the catalogue by polling every citizen, to search his heart, and see if it can not find somebody to punish as a traitor, let it try the virtue of an act of Congress, and the machinery of its own officers. That would give the regulation generality, and relieve it of one of its features of hatefulness, that of being leveled at the people of a particular State, and this by the officiousness of the State authority in a matter committed by the people to other hands. For, I suppose, no one imagines that there is any danger of rebellion against the State government as such. The whole solicitude which prompts this most extraordinary measure, springs from an apprehension of infidelity on the part of the people, or a portion of them, to the Confederate government—and it implies that that government is too weak or its functionaries too timid to provide and apply the needful remedies. We, therefore, must rush in to the help of the nation. If Congress were consulted, I doubt not they would render thanks for the good and patriotic intention, but if they spoke candidly, would declare that they considered the remedy ten times as bad as the disease. No, Sir—the Congress would as soon think of repealing the Constitution, and dissolving into a state of chaos, as to undertake this process of the polling and purgation of the whole people. Nor has any other State proposed or conceived it. They know, that if serious disaffection does not exist, (as every one knows it does not in North Carolina,) this is a way in which the government may readily be brought into contempt and collision with the people; and that if it did, this is not the mode in which to deal with it. Lord Macauley relates of James II, that he never learned how to treat an insurrection, which common sense teaches should be by taking hold of the ring-leaders and making examples of them,—but on the happening of such an occurrence, he seized, tried and executed the unhappy insurgents, of all ages and sexes; and while his servile and tyrannical chief justice Jeffries, went the circuits perverting the law for the condemnation of all accused, the moody monarch diverted himself

among his parasites and courtiers by speaking of them as Jeffries' campaigns. Sir, the progress of your justices under this ordinance, abjuring men and boys, without regard to the aged, the decrepid, the halt, maimed or blind, under terror of exile or degradation from the proud privileges of citizenship, will be looked upon by those who have the instincts, not to say knowle dge of freemen, as no less of campaigns; and with no view to favor the public enemy, but to assert their self-respect and dignity, they will strive to hurl from power the authority under which they are made. What, Sir, is such a proceeding but the establishment of martial law throughout the length and breadth of the State, by which the peaceful citizen is invaded in his home and his conscience, and placed upon the footing of the inhabitant of a besieged city or fortress, or of a conquered rebellious province? A Roman pro-consul, a British colonial Governor, or a successful General in the armies of Abraham Lincoln, with an overwhelming force and but feeble resistance, may adopt measures of such dictatorial severity and rigor. We are informed that Governor Tryon, after overpowering the Regulators at Alamance, marched a military force into many of the upper counties of the then province, and exacted from the inhabitants an oath of allegiance to the King at the point of the bayonet. Gen. Dix, also, upon his recent conquest of the two counties on the eastern shore of Virginia, condescended to advertise their helpless citizens, that if they would take the oath of allegiance to the United States, they should receive every protection, and their property should not be confiscated. This was a sufficient hint what consequences would follow if they did not. But, who before ever heard of a government professing to be free, undertaking to drive from its borders or disfranchise its whole population, if they would not, man by man, submit to the ordeal of a compulsory test oath? Nay, what arbitrary despotism in its domestic rule, ever embarked in any such enterprize of Quixotic absurdity? Was it attempted in France under the first Napoleon, or under the third? Even in the wildest excesses of her revolutionary phrenzy, there seems to have been sufficient common sense left to the ruling authorities to enable them to recollect, that "human law is a rule of civil *conduct*," not of *faith*, and that only bigotry and fanaticism will attempt to regulate conscience and opinion in government or in religion. Charles V., Emperor of Germany and Spain, after waging for years the most bloody and relentless wars, to put down Luther and the Reformation, becoming sated with carnage, and disgusted with the pageantry of monarchy, yielded up the reins to his son, and retired to a monastery. There, he amused his

leisure in scientific studies, and in experiments upon instruments for measuring time. But by no diligence or skill was he ever able to make two clocks run alike. This, says his biographer, Dr. Robertson, saddened his soul with remorseful reflections upon his previous life, in which he had caused rivers of blood to flow, in vain and wicked efforts to compel men to think alike. This simple anecdote, which is but an illustration of all human experience, proves the futility and impossibility of controlling thought and opinion; and that those governments only are wise that leave the mind and conscience free, and are content with conformity to their behests, in action. Of the one hundred and twenty thousand voters in the State, how many in the eighty-five years of its independence have taken an oath to the State, or to the United States, during our connection with that government? Those who have filled office, and exercised a portion of the sovereign power as magistrates or constables, or in the higher stations, have been obliged, and properly too, to swear fidelity to the State and general goverement; but as to the great mass of the people, if they have not literally kept the Scriptural injunction to "swear not at all," it has not been by reason of any oath of fealty imposed by public authority. And the inquiry will naturally be made, where is the necessity for this novel and most extraordinary proceeding? The Legislature has been twice convened in extra session since the breaking out of the present war, and has considered and adopted such measures as they deemed necessary to the public safety or defence. But no member of either House, in anxious contemplation of the crisis, seems to have thought of a test oath, forced upon all the people, under terror of exile or loss of privilege, as among these measures. Cæsar Augustus sent out a decree that all the world should be taxed. The North Carolina Convention is asked to send out a decree that all the world shall be sworn. There is virtue in taxation. Money is the sinews of war—but what nation was ever defended by oaths,—oaths imposed on its own people without distinction, especially when the alternative was banishment or degradation?

Mr. President, to say of this measure that it is absurd and calculated to bring ridicule on our legislation, and that it is unnecessary, and will be wholly ineffectual, if necessary, inasmuch as a forced oath is well understood to be no oath in the sight of man or his Maker, is but to characterize its more obvious features. I am fully pursuaded that abroad, if not at home, it will be regarded as the offspring of fear. It will be argued, and the hypothesis cannot be resisted, that a proceeding so universal, so unusual, so searching, so destructive of

personal freedom and dangerous to public liberty, would not be resorted to except in a State where public sentiment was suppressed by the high hand of force, and a sense of danger had driven the government to desperation. In that aspect no measure could give greater encouragement to the enemy, and no libel could more deeply wound the sensibilities of the people of the State, or do them more gross injustice. They have looked upon the pending contest as a foreign war, of nation against nation, waged upon the frontiers by national armies. But you propose by this ordinance, to declare it a civil and social war, in which no man is to be trusted—in which the secrets of the right hand may be concealed from the left, until you have cleansed out the conscience and made assurance doubly sure by a forced oath. It is not enough that 35,000 men, portions of them from every county in the State, are in the field, exposing their lives to the arms of the enemy, and to the pestilence of camp and garrison, and that almost every family has its representative there; that they have submitted cheerfully to the burdens of taxation, and the privation incident to a destruction of commerce, and have over and above this, voluntarily and cheerfully contributed of their labor, their substance and the very comforts of their homes, to give aid to your soldiers and vigor to their efforts; that there is not a cloud of disloyalty to be seen in all the horizon as big as a man's hand; but that the whole people, it may be with trifling exceptions, are pressing forward with a noble unanimity to the establishment of our national independence. All this will not suffice. Every man must be purged as by fire. And all for what? The report of the committee informs us. It is "is rid the country of traitors at heart," who are supposed to be few in number, and will be discovered when tested by this oath. Such doctrine, Mr. Paesident, is the very bigotry of despotism. Who constituted us the searchers of hearts? What government ever undertook to deal with any thing as crimes, except the overt acts of its people, but the most unmitigated tyrannies? There are doubtless republicans in principle residing under every monarchy in Europe, and there may be monarchists in the States of America, but so long as they demean themselves as peaceable citizens, do not levy war against the State or the Confederate States, nor adhere to our enemies giving them aid and comfort, they pass without molestation, and are under the protection of the Constitution and laws. If there be, as the committee presumes, traitors among us, they are not of my acquaintance, nor, so far as I am aware, of my section. But wherever they are, treason is an offense well known to, and defined by law, and

like other crimes, is to be dealt with according to law. And it is quite remarkable, that while the committee inveigh with vehemence against the despotism now practiced by the Lincoln government in Maryland, they should bring forward a measure equally abhorrent to freedom in North-Carolina. Sir, if such a measure prevails and is acquiesced in, it is of little moment what may be the issue of the present great conflict in the battle-field. We shall in the end be in any event slaves, and present the sad spectacle of a State throwing away its liberties in a struggle to preserve them, in angry imitation of the contagious example of an enemy who threw away theirs, to give vigor to their efforts for our subjugation. I protest against it, as a gross abuse, amounting in effect to a usurpation of power—as a dangerous device by which a faction may at any time pervert the government and transmute it into an oligarchy. I protest against it in the name religious freedom and domestic quiet—in the name of that civil liberty which is our birthright, and has been the inheritance of our ancestors for eight hundred years. I protest against it as a weak and futile weapon of defence, calculated only to encourage the enemy, weaken ourselves, and to bring our legislation into ridicule and disrespect at home and abroad, and degrade our citizens in their own esteem—as an officious intermeddling with the province of the Congress of the Confederate States—as a libel upon the people we represent, whose noble alacrity, patience, perseverance, self-denial and bravery in this contest deserve all praise. Whereas, the statute book, in the present times, and much more in the future, in all historical interpretation must be construed to imply an imputation of wide-spread disaffection. I protest against it, finally, as an imitation of Northern despotism, outstripping its model—no other State of the South having conceived such an idea, though in several of them disaffection not only is rife, but treason stalks abroad in arms.

But the committee plants itself on a precedent in an act of the General Assembly of 1777, and says all the material parts of this ordinance are copied from that act. Precedents in the pleadings of the law are said to be dangerous things, if one does not know how to fill up the blanks; and statutory precedents are equally fallible and deceptive as guides to political action, if we shut our eyes to the circumstances and surroundings of historical facts which distinguish former times from our own. Let me inquire of the committee, whose chairman holds a high judicial station, whether this ordinance does not contravene the Bill of Rights and Constitution in the particulars I have enumerated, and if it does, whether a simi-

lar act, passed in 1777, by the General Assembly, did not equally contravene it—and when an act of the General Assembly does come in conflict with the Constitution, which is to give way? He is obliged to answer, the act of Assembly, of course. But it was not so understood in 1777. The opinion seems to have prevailed then, and for years afterwards, that the General Assembly was as omnipotent as the British Parliament, and when, in 1786, the courts of justice decided an act of the Legislature to be unconstitutional, it produced a great shock in the minds of highly intelligent men. This act of 1777, which undertook to banish freemen who were inhabitants of the State at the adoption of the Constitution, or to deprive them of the right of suffrage if they refused to take an oath of allegiance, was clearly unconstitutional, not only in the points already specified, but in assuming to take away the right of suffrage in the face of the provision of the Constitution declaring that all freemen 21 years of age, who have been inhabitants a certain time, and paid public taxes, shall exercise it. But, waiving the constitutional question, the situation of our ancestors in 1776–'7, differed essentially from ours at this time, in many particulars to their disadvantage; and in the poverty of their resources, and newness of their experiment, it should not surprise us that they laid hold of a test oath as a weapon with which bigotry and arbitrary power had sought to fortify themselves in Europe, hoping they could render it useful in the defence of freedom here. They may possibly have thought that as allegiance under a monarch is due to the person of the sovereign, it might still linger in the breasts of some, and that this violent remedy should be resorted to for its expulsion.* But before we are called on to follow this as a precedent, it should be shown from subsequent history that it was of some avail in the contest. It was provided in the act that the name of every person taking it should be subscribed in a book, to be deposited in the office of the Clerk of the County Court. Who has ever seen such a book? The honorable gentleman from Mecklenburg, Mr. Osborne, who

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* Note.—On looking into 4th Blackstone's Com. p. 124, it will be seen, that the whole of this statute of 1777, in relation to a test oath and banishment, or disfranchisement as a citizen, is literally copied from the statute of George 1st against Popish recusants. So that the ordinance of the committee is but a copy of an act of 1715, applying a religious test to Papists—except that in the former case two Justices of the Peace were invested with power "to tender the oath to any person whom they shall suspect to be disaffected," and in our case every person is treated as if suspected, and tendered the oath accordingly. Blackstone says the penalties are nothing [illegible] *pecuniaire.*

has just taken his seat, has made considerable researches in the public papers of his county, which is one of historical renown; has he ever found such a book? Have you, Sir, or any other gentleman here? One of two conclusions is certain. Either that there was no general attempt to exact such an oath, which is the more probable; or, that if exacted, it had not the least effect. For when the British invaded the State in 1780–'81, the Tories rose in those sections where they were known to be in the outset of the war, and in no other. The act was, therefore, as characterized by the gentleman from Richmond, Mr. Leake, *brutum fulmen*, producing no efficacious result. With the men of 1776–'7, there was a total change of government, and of the administration of government. With them "old things had passed away, and all things had become new." There was no general government on which to rely for general defence and welfare. The States were united only by certain articles of association. And in North-Carolina a State government just formed, with no laws or officers to administer them, except what they enacted and appointed in the pressure of the emergency, was their sole reliance in general and domestic concerns. They had to provide for treason, sedition, and every crime in the calendar, and it is in a statute concerning treason that the committee has found the model of this ordinance. Now, Sir, if so much weight is due to a precedent, why not re-enact the whole statute, that part which relates to treason as well as misprison of treason and test oaths? That is the only part of the statute that we have heard of being put into execution. The Tory Colonel, Bryan, was tried for treason, and convicted, I presume, under this statute. But he had a trial by due course of law. He was not called on to furnish evidence against himself by a test oath, and he was defended by Davie, who had slaughtered a large part of his regiment in battle, but who, after the example of John Adams in defending the British soldiers who fired on the multitude in the streets of Boston, was equally firm in asserting all his rights of defence, as a criminal. But who ever heard of a trial for misprision of treason or sedition, or the general enforcement of a test oath upon any but suspected persons? The Revolution of the 20th of May last, was under wholly different circumstances. What our fathers did in weakness we have done in strength. In the State government, with the same Constitution, the same laws, the same officers in all its departments and ramifications, there has been no change that would cause a ripple on the surface of the waters. The ship of State has sailed on in her great career of justice, without reefing a sail or changing a spar. In national

affairs the difference is still more remarkable. Instead of no general government, and a dependence on the discordant legislation of thirteen States, we find a Constitution of national government copied almost literally from the Constitution of the United States, in full and vigorous operation, with a President, Congress and Judiciary—defending our cause with an army, in effectiveness, if not in numbers, such as the populous North never poured on the Rhine or the Danube, or the sunny plains of Italy—with treason defined in the Constitution for the security of the citizen as well as safety to the government—with the possible power to pass sedition and test laws for its defence, like as the State governments, but like those governments abstaining from the use of them, as the cast-off paraphernalia of despotism. To think of bringing a State test oath into play as a means of defence in such a posture of affairs, upon a precedent of an unconstitutional act of Assembly in 1777, is to my mind, as if one should propose, in the midst of rifled cannon and all the advancement and improvements in modern warfare, to return to the bow and poisoned arrow of the savage, because the Aborigines had used them in the earliest wars of this continent. Let them both be consigned where they belong, to the curious investigations of the antiquarian; but let us hear no more of them in the enlightened legislation of a free people.

Mr. President, there is one diversity in the two revolutions, which, when brought to notice, must convince all that there is the least analogy imaginable in the two cases; and that is in the persons called to fill office upon the change of government. Our ancestors would as soon have thought of electing Lord North to the office of Governor as of recalling Governor Martin or Governor Tryon, and of bringing over Lord Mansfield with his high tory principles to their chief justiceship, as to have appointed one of the late Kings' Judges. Whereas, our State officers, as we have seen, have been unchanged in a single particular; and in appointments to office under the Confederacy, it has been no objection that the appointee held a similar appointment with a regular commission and oath of office, and received its emoluments from the Federal Treasury to the last pay day, before the Proclamation of the 18th of April. Now Sir, in the Revolution of 1776, this would not have been permitted. The first persons on whom the act of 1777, to which the committee refers in terms of such high approbation, laid its hands and required to be sworn, were *all the late officers of the King of Great Britain.* They were put before the "traders who had been making voyages to England within ten years then last past." There are many copies of

Iredell's Revisal, stowed away in the houses of the people of the country; and when they are informed that the precedent for this ordinance is to be found there, they will brush the dust from the old book and read it for themselves. And since the law is to be executed so rigorously on them, they will demand to know whether you began at the beginning and cleared out all who held office under the late government; and when they are told no; such persons have been considered eligible to place under the new government, and no questions asked, they will scout the precedent of 1777, and say if we are to be purged with this great oath or leave the country, those who held the offices, and received their compensations under the old government, should take a dose that would unbreach a cannon, at least before they are trusted with official power. I apprehend, Sir, when the subject is viewed in this light, that many, though they have not slept for the last year like Rip Van Winkle, may come to the conclusion that there has been no very violent revolution after all, and that if there has, such terrible swearing is not Christian-like or decent.

Mr. President, the first and second sections of this ordinance are scarcely less objectionable than what I have been considering. The report of the committee informs us, that the offences therein enumerated, and which the committee calls sedition, were in the act of 1777, called misprision of treason. It is, therefore, reviving an obsolete high crime under a new and milder name. The American world, at least, has made some progress as to these crimes of *Læse Majesty*, treason, misprision of treason, etc., since 1777. It was a great point gained for human life and liberty, that in the Federal Constitution of 1787, treason was defined to consist *only* in levying war against the United States, or in adhering to their enemies, giving them aid and comfort; a provision that has been literally copied in the Constitution of the Confederate States—and by an ordinance of this body, into that of this State also. It is enough to make the blood run cold, now to review the history of what were at different times denominated and adjudged treason in England, and to remember what hetacombs of human victims the fluctuating state of the law, and its pliant and corrupt apministration, to favor the views of the reigning sovereign or of his minions, carried to the scaffold and the gibbet. An extraordinary instance of treason by words, was mentioned in our discussion of this subject at the last session, where a man of note was put to death for declaring in a moment of irritation, on hearing of the shooting by the King, of his favorite stag, that "he wished the horns of the stag were in the King's belly." As Plutarch

relates of Dionysius, the tyrant, that he capitally executed a subject for relating that he had dreamed he killed the King, saying it was proof that he thought of it while awake. Sir, the fate of Sidney and Russell, and a hundred other martyrs of that very freedom, which loomed out in the English revolution of 1688, and assumed its full proportions in our American Constitutions a century later, will rush upon our memories at the suggestion of this theme, and illustrate the wisdom of the constitutional provision. While it sufficiently secures the government from treacherous and parricidal hands, it protects the citizen from that vortex of constructive and exploded treasons, which has engulphed in bloody and premature graves so many innocent men. "To prevent the possibility of those calamities which result from the extension of treason to offences of minor importance, (says Chief Justice Marshall,) that great fundamental law which defines and limits the various departments of our government, has given a rule on the subject both to the Legislature and the Courts of America, which neither can be permitted to transcend." With this limitation upon charges of treason, and the experience of that rational freedom established by the Constitution of the State, came more liberal views in relation to the inferior crimes of its class. Misprision of treason has entirely disappeared from the statute book of the State. It is found in that of the United States, covering only a single offence, according to its literal meaning, that of concealing and not disclosing and making known to the public authorities, the commission of any treason that may come to the knowledge of the person charged. Sedition is found in our Revised Code, as the heading of a particular offence, that of exciting slaves to insurrection. In this connection, it is a salutary part of our law according with public sentiment, and can be executed with effect wherever an offender may be found. This was abundantly proved in the case of Daniel Worth, and of others. This law applies to attempts to excite rebellion in a degraded caste in our society, wholly devoid of all political power.

But among freemen, every one of whom is equal, in consultation and at the ballot-box, if restraints upon the fredom of speech and of the press may be imposed, beyond those provided by the common law, it has never been found necessary to call them into operation heretofore. There seems to have been a general acquiescence in the doctrines of Jefferson in his inaugural address. "If there be any among us who would wish to dissolve this Union [Confederacy] or to change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated,

where reason is left free to combat it." I have myself been accustomed to associate statutes of sedition with those indictments for seditious libel, where there were attempts to screen corruption, imbecility, favoritism, and the insolence of office, by criminal prosecutions against persons who exposed them, and when the gallantry of Erskine, Curran, and other advocates at the English and Irish bar won immortal names in wrestling with a domineering and subservient bench, that never forgot the hand that elevated it above the people, nor its favorites, and prevailing in the contest. I have been accustomed to look upon them as bringing into active employment, if not producing, a vile race of parasites and sycophants, Titus Oateses, Bedloes, *etc.*, thronging the gates of office and patronage, in the character of spies and informers, ready to discover Meal-tub plots and Rye-house plots of the most direful import, and to accuse any man, whom it might be desirable to hunt down and destroy. You propose by the first section of this ordinance, to create nine indictable offences, every one of which is described in a manner so loose and undefined, as to hold out the greatest temptations to malignant accusers, and to produce neighborhood strifes without end. I shall not detain the Convention by a recital of them. Their counterpart may be found in the misprisions against the King's person and government, which Blackstone says may be "by speaking or writing against them, cursing or wishing him ill, giving out scandalous stories concerning him, or doing anything that may tend to lessen him in the esteem of his subjects; may weaken his government, or may raise jealousies between him and his people." Under this it has been at different times held indictable, to say of the King that he had a cold, at a time when his services were important in the field—also, to say of him falsely, that he labored under mental derangement—or to drink to the pious memory of a traitor, or for a clergyman to absolve persons at the gallows who there persist in the treasons for which they die, &c. 4. Black. Com. 123. Sir, the whole doctrine is unsuited to our free institutions. It is founded on the supposition, that force, compulsion, is the only means of upholding government, even to excite love for it—and that public opinion is nothing, and must be subordinated by it. We have sufficient law now to afford all the security needed, if, as no one doubts, public sentiment is with us, and will enable us to enforce it—and if it is not, no new statutory enactment will be enforced. The common law of riot, rout, unlawful assembly, and conspiracy enable you to take hold of any parties whose guilt may be dangerous; and the doctrine of seditious libel is the same now that it was in 1802 when Harry

Crosswell was convicted of a libel on President Jefferson—except that the truth of the matter published is a defence. Over and above this, every section of the State is accessible on brief notice by Railroad, and the miliary power may be exerted with effect on the first appearance of insurrection.

But, Sir, the whole scope of this ordinance is to give proper defence and protection to the Confederate States. There are a few expletives thrown in, in which the State is mentioned, but they seem only designed to fill out a sentence, and give roundness to a period. Now what busines is it of ours to pass a law to punish sedition against the Confederate States any more than to punish the robbery of its treasury or post-office, or piracy against its ships on the sea? If there is to be such a crime as sedition against that government, ought it not to be a general crime, punishable in Virginia, Tennessee, Kentucky and other States? And has not that government a Congress now in session for the third or fourth time? Is it supposed that we are wiser than they, and are to usurp their functions? If that Congress has the same propensity to copy that prevails here, they need only turn to the administration of the elder Adams, and re-enact the sedition law of that day, referred to by the gentleman from Richmond, (Mr. Leak.) It is a very well drawn statute, much better than this ordinance. I say this without disrespect to the committee, for they only profess to copy from the act of 1777. The gentleman from Richmond made a slight error in supposing this was the same with the sedition law of 1798. It is infinitely worse. Judge Chase had decided and correctly too, that there was no law of the United States except what was enacted by statute, and therefore that there was no law of libel to protect its officers from the President downward against any defamation whatever. The act was consequently passed to punish by indictment libellous publications against them, which would be indictable if made against other persons by the common law—allowing, however, the truth to be given in evidence as a defence. Yet, so distasteful was it to the public mind, and so odious did it render its authors, that after a lapse of half a century, when all other party issues of that time are forgotten, it still remains in public recollection. But as a restriction on liberty, the liberty of the press and of speech, it was as nothing compared with this act, which has been exhumed from the oblivion in which it has lain for eighty-odd years, and which it is proposed to revivify, just as it was on the day of its first enactment. At that time the doctrine prevailed here as well as in the mother country, of "the greater the truth the greater the libel." So that if any man "shall pub-

lish and deliberately speak or write against our public defence," (this is one of the offences it creates) no matter how true may be the words written or spoken, such as that a commanding General fled ingloriously from a field of battle, when victory was within his grasp, or that from his incompetency he sacrificed half his command without any conceivable object, although it may be every word true, the party who wrote or spoke thus, must be convicted.

If the Congress of the Confederate States desires to try over again the experiment of a Sedition Law of 1798, or to go back beyond it, and re-copy old penal statutes made to put down Papacy, or uphold the prerogatives of royalty, the way is perfectly open to them. But let us not render ourselves a subject of merriment, by taking better care of that government than it takes of itself. Let us not stigmatize our people by singling them out as peculiar subjects for the operation of laws of this kind. Let us not give just cause of offence to them, by showing a distrust of that elevated patriotism and unanimity with which they are sustaining their country in this her hour of trial. Let us abandon this measure as impolitic, as it is insulting, oppressive and unjust. I ask the yeas and nays on the question of its indefinite postponement.

APPENDIX.

THE FOLLOWING IS THE ORDINANCE, PRESENTED BY MR. BIGGS, OF MARTIN, CHAIRMAN OF THE COMMITTEE:

AN ORDINANCE

To define and punish Sedition, and to prevent the dangers which may arise from persons disaffected to the State.

Be it ordained, That if any person within this State shall attempt to convey intelligence to the enemies of the Confederate States, or shall publish and deliberately speak or write against our public defence; or shall maliciously and advisedly endeavor to excite the people to resist the Government of this State or of the Confederate States; or persuade them to return to a dependence on the Government of the United States; or shall knowingly spread false and dispiriting news; or maliciously or advisedly terrify and discourage the people from enlisting into the service of this State or of the Confederate States; or shall stir up or excite tumults, disorders, or insurrections in this State; or dispose the people to favor the enemy; or oppose or endeavor to prevent the measures carrying on in support of the freedom and independence of the said Confederate States; every such person being thereof legally convicted by the evidence of two or more credible witnesses, or other sufficient testimony, shall be adjudged guilty of a high misdemeanor, and shall be fined and imprisoned at the discretion of the court, and shall enter into recognisance with good surety, in such sum as the court may deem proper, to be of the peace and good behavior toward all people in the State for three years thereafter.

2d. Any Judge or Justice of the Peace on complaint to him made on the oath or affirmation of one or more credible person or persons, shall cause to be brought before him any offender against the provisions of this ordinance, who shall enter into recognisance with sufficient surety to be and appear at the next county court of the county wherein the offence was committed, and abide the judgment of said court; and in the meantime, to be of the peace and good behavior to all

people within the State; and for the want of such surety, the said Judge or Justice shall commit such offender to the jail of the county.

3d. It shall be the duty of every free male person in this State above sixteen years of age, (volunteers mustered into the service of the State or of the Confederate States, persons *non compos mentis* and prisoners of war only excepted,) before some court or officer authorized to administer oaths, to take the following oath or affirmation:

"I, A B, do solemnly swear (or affirm as the case may be) that I will bear faithful and true allegiance to the State of North-Carolina, and will to the utmost of my power, support, maintain and defend the independent government of the Confederate States of America against the government of the United States, or any other power, that by open force or otherwise shall attempt to subvert the same. I do hereby renounce all allegiance to the government of the United States, and I will support and defend the Constitution of the Confederate States of America and the Constitution of this State not inconsistent with the Constitution of the Confederate States, so help me God."

And it shall be the duty of every officer administrating such oath to certify under his hand and seal to the next county court which may be held in the county where the jurors or affirmants reside, the names of all persons, who have taken the oath before him, which certificate shall be recorded by the clerk of the county court in a book to be kept for that purpose.

4th. Every male person as aforesaid who shall fail or neglect to take the said oath or affirmation on or before the first day of January next, may, by any Justice of the Peace of his county, be cited to appear before the county court to take the same; and if any person thus cited shall fail to attend, or attending at the time and place, as he shall have been thus warned, shall refuse to take the oath or affirmation, (except excused by sickness, unavoidable necessity, or other sufficient reasons to be adjudged of by the next county court,) shall be ordered by the said county court to take the said oath or quit the State, and depart out of the Confederate States within thirty days thereafter. *Provided however*, That the county court may, in their discretion, permit a person failing as aforesaid, to remain in the State.

5th. If such person shall be permitted to remain in the State, he shall be adjudged incapable and disabled in law to have, occupy, or enjoy any office, appointment, license, or election of trust or profit, civil or military, within this State,

and shall not be capable of being elected to, or aiding by his vote to be a member of Assembly, Governor, or any other officer; and if any person shall be directed to depart out of the Confederate States, and shall not quit the State within thirty days, then such person may be apprehended by the warrant of any Judge or Justice of the Peace in this State (whose duty it shall be to issue such warrant) and shall be brought before the county court, where the order was made, and the said court shall, in such case, send the person so offending, as speedily as may be, out of the Confederate States, at the costs and charges of such offender (if he has the means to pay the same,) and to this end shall, and may direct the Clerk of the court to issue an order to any Sheriff in the State to seize and sell so much of the goods and chattels, lands and tenements of such person in his county as may be judged necessary by said court to defray the costs and charges, together with the costs and charges of apprehending and confining such person until he shall be sent out of the Confederate States; and such sheriff shall execute proper conveyances for any property so sold, and return the money arising by any sale made by virtue of such order, after deducting his fees and commissions as in other cases, to the next county court of the county whence such order issued, under the penalty of five hundred dollars, to be recovered, upon motion against the Sheriff and his sureties, by the county Solicitor for the use of the county, after ten days notice; and if any surplus shall remain after paying all costs and charges as aforesaid, the county court shall cause such surplus to be paid to the owner.

6th. If any person so departing or sent off from this State shall return to the same, then such person shall be adjudged guilty of treason against the State, and shall, and may be, proceeded against in like manner as directed in case of treason.

7th. This Ordinance may be modified or repealed by the General Assembly—shall take effect at the date of its ratification, and be published by the Secretary of State as soon as practicable thereafter, in one (if there be one) newspaper in each Congressional District, and at each Court House in the several counties of the State.